

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BRIAN K. DADE,

Plaintiff,

Case No. 24-cv-1123-pp

v.

MARTIN J. O'MALLEY,

Defendant.

**ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR LEAVE TO
PROCEED WITHOUT PREPAYING FILING FEE (DKT. NO. 8)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2. The court ordered the plaintiff to file an amended motion for leave to proceed without prepaying the filing fee, dkt. no. 6, and the plaintiff filed that amended motion, dkt. no. 8.

Federal law requires a person who files a complaint in federal court to pay \$405—a filing fee of \$350 (28 U.S.C. §1914(a)) and a \$55 administrative fee (Judicial Conference of the United States District Court Miscellaneous Fee Schedule Effective the December 1, 2023, #14). To allow the plaintiff to proceed without prepaying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's amended affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff indicates that he is not employed and he is not married. Dkt. No. 8 at 1. He has two dependents he is responsible for supporting and his monthly obligation is \$480. Id. The plaintiff lists no monthly wages or salary and says that he receives Foodhshare of \$281 per month. Id. at 2. The plaintiff lists \$1,055 in monthly payments (\$475 rent—he says his mother pays this, \$480 child support—he says he is not paying this and owes about \$15,000; \$100 other household expenses—he says his mother helps pay these). Id. at 2-3. The plaintiff owns a 2006 Dodge Stratus that doesn't work, he does not own his home or any other property of value and he has no cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff has demonstrated that he cannot pay the \$405 fee.

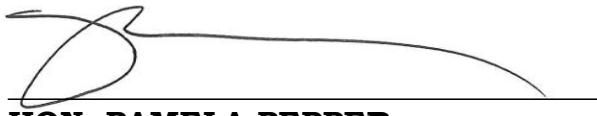
The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's complaint indicates that he was denied benefits by the Commissioner and that he is seeking review of that denial because the Administrative Law Judge issued a decision that was not supported by substantial evidence and contains errors of law and the Appeals Council erred when it declined to review the ALJ's adverse decision. Dkt. No. 1 at 1-2. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's amended motion for leave to proceed without prepaying the filing fee. Dkt. No. 8.

Dated in Milwaukee, Wisconsin this 12th day of September, 2024.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge